

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
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FLOOR DEBATE

April 3, 2006

LB 79
LR 274

these crossings arbitrarily. That seems to be a misunderstanding. And this is dealing only with public crossings. It's a safety issue. I'm tired of working fatal accidents on crossings that should be closed and this bill would, I'm sure, is going to save some lives. So I would ask for advancement of LB 79 to Select File. Thank you.

SENATOR SCHIMEK: Thank you, Senator Baker. You've heard the closing on LB 79. The question is the advancement. All in favor vote aye; all opposed vote nay. Record, Mr. Clerk.

CLERK: 27 ayes, 5 nays, Madam President, on the advancement.

SENATOR SCHIMEK: The bill advances. Next item, Mr. Clerk.

CLERK: LR 274CA, offered by Senator Brashear, proposes an amendment to Article II, Section 1 of the Nebraska Constitution. The resolution was referred to Judiciary, advanced to General File. At this time I have no amendments, Madam President.

SENATOR SCHIMEK: Senator Brashear, you are recognized to open on LR 274CA.

SPEAKER BRASHEAR: Thank you, Madam President. LR 274CA proposes a constitutional amendment to make a narrow change to the separation of powers provision of the Constitution of the State of Nebraska. It is a change that has been endorsed by your Community Corrections Council. To provide some background, it is well known that our government is divided into three branches of government: the executive, the legislative, and the judicial branches, each set forth in the constitution. Nebraska, however, has an unusually strict separation of powers clause in Article II, Section 1 of the constitution. It reads in relevant part, "no person or collection of persons being one of these departments, shall exercise any power properly belonging to either of the others." To its credit, the Nebraska Supreme Court has taken the language seriously and has imposed strict limits on the ability of officers of one branch to exercise substantive power in another branch. The two major cases or decisions in this area are the Conway decision and the Murphy decision. In the case, the court held that because